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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,868	03/07/2007	Takashi Mori	Q94502	3900
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SUITE 800				
WASHINGTON, DC 20037				
EXAMINER				
WILLIAMS, LEZA				
ART UNIT		PAPER NUMBER		
1787				
NOTIFICATION DATE		DELIVERY MODE		
09/23/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/575,868

Applicant(s)

MORI ET AL.

Examiner

LELA S. WILLIAMS

Art Unit

1787

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI.08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Interval Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7, 2010 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. **Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamai et al. JP 2941416.**

Hamai et al. discloses a method for deodorizing unpleasant smells, such as hydrogen sulfide, which is caused during the process of treating foodstuffs, specifically fish meat, with high temperature and elevated pressure (page 2). The reference adds an oxidizing agent, of which ascorbic acid is listed (machine translation page 4). Hamai also teaches the addition of "auxiliary materials" and seasonings to the fish product before the fish material is treated by an extruder at high temperature (70-200°C) under elevated pressure (machine translation page 3, line 6). After the fish material is treated by ascorbic acid, secondary materials, and extruder, it is frozen (machine translation page 3, last paragraph and page 4, line 10).

It is noted that the reference teaches heating the protein in a solution of ascorbic acid and not the addition of ascorbic acid before heating the protein; however, Hamai teaches “hydrogen sulfide can be removed, and deodorization can be aimed at still better” (machine translation page 4). Therefore, Hamai teaches of substantially the same product produced by substantially the same method as instantly claimed by applicant; where the claimed and prior art products are produced by substantially identical processes, a prima facie case of obviousness has been established. To switch the order of performing process steps, i.e. the order of the addition of the ingredients into the final mixture, would be obvious absent any clear and convincing evidence and/or arguments to the contrary (MPEP 2144.04 [R-1]). “Selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results”. Therefore, one of ordinary skill in the art would have been motivated to reduce hydrogen sulfide in proteins by the incorporation ascorbic acid.

Response to Amendment

4. Claims 1, 3, and 5 are pending. Claims 2, 4, and 6-15 have been cancelled.
5. Applicant's amendment to claim 1 is sufficient to overcome the 35 U.S.C. § 112, first paragraph rejection set forth in the previous office action.

Response to Arguments

6. Applicant's arguments filed September 7, 2010, with respect to the rejection(s) of claim(s) 1, 3, and 5 under 35 U.S.C. § 102 (b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new

ground(s) of rejection is made under 35 U.S.C. 103(a) as being unpatentable over Hamai et al. JP 2941416.

7. Applicant states “Hamai does not teach adding the ascorbic acid analogue to the food material prior to treating with heat and pressure or obtaining a food material.” (page 5).

It is noted that the reference teaches heating the protein in a solution of ascorbic acid and not the addition of ascorbic acid before heating the protein; however, Hamai teaches “hydrogen sulfide can be removed, and deodorization can be aimed at still better” (machine translation page 4). Therefore, Hamai teaches of substantially the same product produced by substantially the same method as instantly claimed by applicant; where the claimed and prior art products are produced by substantially identical processes, a prima facie case of obviousness has been established. To switch the order of performing process steps, i.e. the order of the addition of the ingredients into the final mixture, would be obvious absent any clear and convincing evidence and/or arguments to the contrary (MPEP 2144.04 [R-1]). “Selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results”. Therefore, one of ordinary skill in the art would have been motivated to reduce hydrogen sulfide in proteins by the incorporation ascorbic acid.

Further, applicant states advantageous by adding ascorbic acid prior to treatment as supposedly shown by Example 7; however applicant has not provided any data to support said advantages and the criticality of the addition of ascorbic acid prior to heating. Moreover, Example 4, Comparison with the Secondary Deodorization Treatment (the Method of JP 2941416), as disclosed in the present specification is not commensurate in scope, as JP 2941416

discloses the addition of ascorbic acid, and not just secondary treatment such as freezing, thawing, and boiling.

Applicant's claims to unexpected results in that hydrogen sulfide odor can be controlled by the addition of ascorbic acid first are not persuasive given Hamai's teaching of heating the protein in a solution of ascorbic acid and "hydrogen sulfide can be removed, and deodorization can be aimed at still better" (machine translation page 4) and the common knowledge that ascorbic acid is known to have antimicrobial properties against meat spoilage (i.e., the development of bad odor).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LELA S. WILLIAMS
Examiner, Art Unit 1787

/L. S. W. /

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787